



GOVERNMENT OF KERALA

General Administration (Co-ordination) Department

No. 38566/Cdn.2/10/GAD

Thiruvananthapuram, Dated 02/06/2010

CIRCULAR

Sub: General Administration Department- Court Cases- High Court direction- Filing of Appeal by Government departments- Delay- Condonation- Instructions issued- Regarding.

Ref: 1). Order dated 17.5.2010 in W.A No. 670/10 of Hon. High Court

2) Fax message No. W.A No. 670/10 dated 28.5.2010 from T.B. Remani, Sr. Govt. Pleader, Advocate General's Office, Ernakulam

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While considering the delay condonation petition along with the writ petition of the Government against the judgment of a Learned Single Judge of Hon. High Court of Kerala in W.P. (C) No. 34008/2008 filed by Sheeja Mukundan, Full Time Sanskrit Teacher, Karippal S. V. U. P School, Karippal, Chapparappadu, Kannur, the Division Bench of Hon. High Court has given following directions on 17.05.2010.

“We are disturbed on the conduct of various Government Departments in filing most of the Government cases with inordinate delay with stock explanation that it is administrative delay that led to non-filing of cases in time. In our view administrative delay can only mean inefficiency in the administration. The settled position in law is that unless the delay is meticulously explained, delay should not be condoned. Therefore, a general explanation of administrative delay is unacceptable in court for admitting a case filed belatedly.

However, we are not inclined to treat the Government as an ordinary litigant whose cause in court should get defeated on account of delay on the part of one or some of the officers of the Government. Government represents the public and any legitimate cause of the Government not considered by Court on merit on account of somebody's delay in filing the case on behalf of the Government will affect public interest. We therefore feel in every case filed before court with a delay, an enquiry should be conducted by the Head of the Department identifying the person or persons who have caused the delay in filing the cases and such person or persons should file affidavit explaining how and why delay was caused on his part. It should also be explained whether the Head of the Department who conducted the enquiry is satisfied whether disciplinary action is called for against the person or persons who caused the delay. Besides disciplinary

action to be taken at the department level, identification of the person concerned who caused delay in filing the case would also help the court to impose personal cost on such person which under no circumstances should be borne by the Government i.e., the public”.

The Division Bench of Hon. High Court has further ordered in the judgment as given below:

“We direct the Chief Secretary to Government to issue instructions to all the Departments to file delay condonation petition only after conducting an enquiry and after identifying the officer and with an affidavit by the officer or persons concerned who caused the delay. A report of compliance should be filed by the Chief Secretary within 3 weeks from the date of receipt of a copy of this order and only thereafter this court will consider the delay condonation petition in this case”.

In view of these directions of the Hon. High Court of Kerala, following instructions are issued to all concerned for strict compliance-

- 1) The Government authorities responsible for filing cases/appeal or various kind of petitions before the Courts should make all efforts to finalize their decision in this regard within the time frame and should take all possible-action for filing the same within the time limit prescribed.
- 2) In every case to be filed before the Court with a delay, an enquiry should be conducted by the Head of the Department identifying the person or persons who have caused the delay in filing the cases and such person or persons should file affidavit explaining how and why delay was caused on his/their part. It should also be explained whether the Head of the Department who conducted the enquiry is satisfied whether disciplinary action is called for against the person or persons who caused the delay

Sd/-

Dr. P. Prabakaran
Chief Secretary

Forwarded/By order

Sd/-

Section Officer

To

All Addl. Chief Secretaries/Prl. Secretaries/Secretaries/Secretary to Chief minister/All District Collectors/All Head of Departments(They should ensure that the circular is communicated to all sub offices under their control)/The Advocate General/Registrar General of High Court/ All Secretaries of District Panchayats/ All Departments and Sections including Law and Finance/ P.S to Chief Minister/ Spl. Secretary to Chief minister/ P.S. to all Ministers/Addl. Secretaries to Chief Secretary/ P.A. to Secretary NAD/ Stock file/ Office copy.

Forwarded to

All P.C.C.Fs/ Addl. P.C.C.Fs/C.C.Fs/ C.Fs/ D.F.Os/Range Officers/Sections